IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5648 of 2007

Date of Decision: 2.11.2007

Ram Phal & Ors. ...Petitioners

Vs.

Smt.Giano ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.S.C.Kapoor, Senior Advocate,
with Mr. Harminderjit Singh, Advocate,
for the petitioners.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order passed by the learned courts below vide which application moved by the petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code) has been ordered to be dismissed.

In the application it was prayed that the petitioner-plaintiffs

being owners in possession of the suit land, the mutation sanctioned in favour of the defendant was illegal and therefore, liable to be set aside. It was claimed that the defendant-respondent has no right to alienate the suit land. It was pleaded that in case the defendant-respondent succeeds in her illegal mission, the plaintiffs would suffer an irreparable loss and injury which cannot be compensated in any manner. Balance of convenience was also claimed to be in favour of the plaintiffs.

On notice, the defendant contested the application on the plea that the same was not maintainable as the plaintiffs were not owners in possession of the suit property. The defendant had also filed a suit bearing No.660 of 1986 which stood decreed up to the Hon'ble Supreme Court regarding the subject matter of the present suit and impugned mutation was sanctioned in view of the judgment and decree passed by the civil court which was upheld up to the Hon'ble Supreme Court. It was also the case of the defendant that a similar suit was filed by the plaintiffs earlier. It was claimed that the defendant being the owner has right to deal with the property in the way she likes and no loss or injury is likely to be suffered by the plaintiff-petitioners.

The plaintiffs had claimed that the suit property was purchased by the plaintiff No.4 Jage Ram, his brother Puran and their father Mai Dhan and mutation was also sanctioned in their favour. After sanctioning of mutation Mai Dhan transferred his 1/3rd share in favour of his son Puran and Jage plaintiff No.4 by civil court decree in Civil Suit No.56 of 1980 dated 14.2.1980 and thus, it was claimed that Puran and Jage Ram became

owners of that share. Mai Dhan again suffered a decree in civil suit No.549 of 1981 dated 31.7.1981 in favour of plaintiffs No.5 to 7 and transferred his one third share and mutation was sanctioned.

The defendant respondent filed a civil suit by claiming to be the daughter of Mai Dhan and sought possession of half share of agricultural land on the basis of gift deed and also sought possession of 1/9th share by way of inheritance and the judgment and decree relied upon by the plaintiff-petitioners in the previous suit was challenged. The suit filed by the defendant-respondent was decreed, and the said decree has attained finality up to the Hon'ble Supreme Court. The defendant, thereafter filed an execution application which was pending. The said judgment and decree were claimed to be illegal and void and based on wrong facts. It was also the case of the defendant that the gift deed in favour of the defendant-respondent was not challenged and therefore, it was claimed that the application deserved dismissal.

Learned courts below came to the conclusion that there was no merit in the application moved by the petitioners. It was further held that balance of connivence was also not in favour of the petitioner-plaintiffs and the application was accordingly dismissed.

The order passed by the learned trial court has been affirmed by the learned Additional District Judge, Panipat.

Mr. S.C.Kapoor, learned senior counsel appearing on behalf of the petitioners has challenged the said order passed by the courts below primarily on the ground that the present suit has been filed to challenge the

judgment and decree on the plea of fraud as fraud vitiates every proceedings and therefore, the plaintiff-petitioners were entitled to maintain the present suit as well as injunction application as non grant of injunction was likely to cause irreparable loss and injury to the plaintiffs.

Learned senior counsel appearing for the petitioners also contends that the respondent-defendant cannot sell more than the share which has fallen to her share under the previous judgment and decree and therefore, the petitioners were entitled to injunction and the learned courts below committed illegality and jurisdictional error in dismissing the application.

The plea of the petitioners cannot be accepted. The case set up by the plaintiffs is the challenge to the judgment and decree passed by the civil court which has attained finality up to Hon'ble Supreme Court. Thus, it can safely be said that there is no prima facie case in favour of the petitioners and the mutation sanctioned cannot be said to be suffering from such an illegality which could give right to the plaintiffs to maintain the present suit. Merely because certain allegations of fraud are levelled which are yet to be proved cannot be said to be giving any right to the plaintiffs to claim injunction against the judgment and decree passed by the learned civil court which has been upheld up to the Hon'ble Supreme Court.

The second contention of the learned senior counsel for the petitioners is also misconceived. Nothing has been brought on record to show as to what is being sold and what steps are being taken by the defendant-respondent to dispose of the property in excess of her

ownership.

In view of this, there is no merit in the present revision which is accordingly dismissed.

(Vinod K.Sharma)
Judge

2.11.2007
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